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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,769	03/15/2004	Aavishkar Bharara	16IN0224	2653
7590 Patrick W. Rasche Armstrong Teasdale LLP Suite 2600 One Metropolitan Square St. Louis, MO 63102				
			EXAMINER NGUYEN, VAN H	
			ART UNIT 2194	PAPER NUMBER
			MAIL DATE 09/18/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/800,769

Applicant(s)

BHARARA, AAVISHKAR

Examiner

VAN H. NGUYEN

Art Unit

2194

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This communication is responsive to the RCE filed 06/26/2008.

Claims 1-20 are currently pending in this application. Independent claims 1, 9, and 16 have been amended.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/09/2008 has been entered.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the recited “*computer readable medium*”. The Specification does not mention the recited “*computer readable medium*”. Thus, there is no support or

antecedent basis for the recited “*computer readable medium*” that allows the meaning of the terms to be ascertained, as required in 37 CFR 1.75(d)(1).

Claim Objections

4. Claims 10-15 and 17-20 are objected to because of the following minor informalities:
- **Regarding dependent claims 10-15:** the claims should start with “the method” since they are referring to “a method” of independent claim 9.
 - **Regarding dependent claims 17-20:** the claims should start with “the computer program” since they are referring to “a computer program” of independent claim 16.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 USC § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16-20 are rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding independent claim 16: “the code segments” lacks antecedent basis. Claim 16 has no “code segments” term that defines or supports the given reference.

Dependent claims 17-20 are rejected for fully incorporating the deficiencies of their base claim.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-8 and 16-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. under 35 U.S.C. 101

Regarding independent claim 1, the claim recites a “system” comprising “a framework”. As currently recited the “system” comprises only computer software element(s). Thus, the claim is a program per se and does not fall within any of the four enumerated categories of patentable subject matter in section 101.

For the same reasons discussed *supra* with respect to independent claim 1, dependent claims 2-8 fall outside the scope of § 101.

Regarding independent claim 18, the claim recites “*computer readable medium*” and the specification fails to provide antecedent bases for this limitation [see objection to the specification above]. Without antecedent basis for “*computer readable medium*”, it is unclear if the limitation intended to be the same as the storage media described as part of the disclosed program product or whether it's intended to be broader than the disclosed storage media. It is believed that the limitation “*computer readable medium*” is intended to claim something broader than the disclosed storage media and cover signals, waves and other forms of transmission media, that carry instructions. Therefore, the limitation “*computer readable medium*” is not limited to physical articles or objects which constitute a manufacture within the meaning of 35 USC 101 and enable any functionality of the instructions carried thereby to act as a computer component and realize their functionality. As such, the claim is not limited to statutory subject matter and is therefore non-statutory.

For the same reasons discussed *supra* with respect to independent claim 16 dependent claims 17-20 fall outside the scope of § 101.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by **Ying et al.** (US 6147967 A).

As to claim 1:

Ying teaches a system including a multi-tier application architecture having a middletier, the system comprising: a framework to mediate between an application within a front-end tier and the middletier, wherein the framework is configured to: allow the to execute an object fetched by the application from a cache; when the execution of the object fails, repeatedly refresh the object within a limited number of retries; when the object refresh succeeds, return the object to the cache and again allow the middletier to execute the object; and when the object refresh does not succeed within the limited number of retries, quit the application in fail-safe way (see col.3, lines 16-31; col.5, lines 3-53; col.7, line 64-col.8, line 50; col.9, line 59-col.10, line 8; and col.20, line 17-col.21, line 48).

As to claim 2:

Ying teaches allow user to specify the limited number of retries (see col.14, lines 34-50; col.15, line 13-col.16, line 59).

As to claim 3:

Ying teaches allow user to specify a time interval between the retries (see col.14, lines 34-50; col.15, line 13-col.16, line 59).

As to claim 4:

Ying teaches the framework operations are visible to a user (see col.14, lines 34-50; col.15, line 13-col.16, line 59).

As to claim 5:

Ying teaches a watchdog configured to resume normal operations when the middletier crashes (see col.15, line 13-col.16, line 59 and col.19, line 49-col.20, line 9).

As to claim 6:

Ying teaches the watchdog is configured to recover a middletier based on a result of periodical polling (see col.15, line 13-col.16, line 59 and col.19, line 49-col.20, line 9).

As to claim 7:

Ying teaches the watchdog is configured to recover a middletier based on notification from the framework (see col.15, line 13-col.16, line 59 and col.19, line 49-col.20, line 9).

As to claim 8:

Ying teaches a logic controller, a detector, a refresher, and a quitter (see col.15, line 13-col.16, line 59 and col.19, line 49-col.20, line 9).

As to claims 9-15:

Refer to claims 1-8 above for rejections.

As to claims 16-20:

Refer to claims 1-8 above for rejections.

Response to Arguments

8. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. The prior art made of record, see PTO 892, and not relied upon is considered pertinent to applicant's disclosure. Applicant should review these references carefully before responding to this office action.

Contact Information

10. Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: (571) 272-2100.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VAN H. NGUYEN whose telephone number is (571) 272-3765. The examiner can normally be reached on Monday-Thursday from 8:30AM-6:00PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MENG-AI AN can be reached at (571) 272-3756.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/VAN H NGUYEN/
Primary Examiner, Art Unit 2194